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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.A. No. 490 /2005

APPELLANT

(IN JAIL)

Kamlochan, S/o. Baldhar, Aged
about 42 years, Occupation-
Labourer, R/o. Village Retabandh,
Thana Bhanpuri, Distt-Bastar,
Jagdalpur (C.G.).

1825/05
190305
by Shri. A. Man. Kesharwan
Advocate
A. D. R. (J)

VERSUS

RESPONDENT

State of Chhattisgarh, Through
P.S. Nagarnar, District Bastar,
Jagdalpur.

APPEAL UNDER SECTION 374(2) OF CODE OF CRIMINAL
PROCEDURE

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 490/2005

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Kamlochan,

Versus

State of Chhattisgarh

Sd/-
Dilip Raosaheb Deshmukh
Judge

13 -02-2006

(13)

HIGH COURT OF CHHATTISGARH AT BILASPURCr. Appeal No. 490/2005

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Kamlochan

Versus

State of Chhattisgarh

Shri Kishore Bhaduri, learned Counsel for the appellant.

Shri Ashish Shukla, G.A./Addl. Public Prosecutor for the State.

ORAL JUDGMENT(Passed on 13th of February, 2006)

The appellant is aggrieved by the judgment dated 14-01-2005 delivered in Special Case No.42/2004 by Shri Surendra Tiwari, Special Judge, N.D.P.S. Act. , Bastar, Headquarter at Jagdalpur whereby the appellant was convicted under Section-20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act. 1985 (hereinafter referred to as the "Act") and was sentenced to R.I. for 5 years and a fine of Rs.10,000/- and in default of payment of fine to undergo additional R.I. for two years.

2. Brief facts are that on 10-09-2004 S.K.Singh, PW-4 Assistant Sub Inspector, Police Chowki-Bakawand on receiving secret information apprehended the appellant at the Raj Nagar crossing in presence of witnesses and found that the appellant was carrying a blue coloured bag on the carrier of his Cycle. Shri S.K.Singh PW-4 gave notice Ex.P-4 under Section-50 of the Act to the appellant

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informing him that if he wanted he can get the search affected through him or through any Gazetted Officer. The appellant consented to the search by Assistant Sub Inspector Shri S.K.Singh PW-4 which was recorded. The bag was searched and found to contain ganja like substance which was weighed and found to be 8 K.G. Out of this, two samples of 30 grams each were taken and sealed. The bag containing ganja like substance was also sealed. After complying with the necessary legal formalities, Shri S.K. Singh, Assistant Sub Inspector deposited the sealed blue plastic bag and two sample packets in the Malkhana of P.S. Bakawand on 10-09-2004. On 12-09-2004, one of the sample packets was sent to Forensic Science Laboratory, Raipur for chemical analysis through a memo of the Superintendent of Police dated 12-09-2004. Vide report dated 12-10-2004 the Forensic Science Laboratory opined that the sample packet contained ganja. After completion of investigation, the appellant was prosecuted for the offences punishable under Section-20(b)(ii)(B) of the Act.

3. The appellant abjured the guilt. The prosecution examined 5 witnesses. The appellant pleaded innocence in defence and led no evidence. The trial Judge relying upon the evidence led by the prosecution convicted and sentenced the appellant as aforesaid in para-1.

4. Shri Kishore Bhaduri, learned counsel for the appellant has assailed the impugned judgment dated 14-01-2005 on the sole ground of non-compliance of Section-50 of the Act. He has contended that Assistant Sub Inspector Shri S.K.Singh

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PW-4 i.e. the Officer affecting the search did not inform the accused about his right under Section-50 of the Act and did not give him the option to be taken without unnecessary delay to the nearest Magistrate.

5. Learned counsel for the appellant argued that due to non-compliance of Section-50 of the Act, the conviction of the appellant under Section-20(b) ii (B) of the Act cannot be sustained in the eye of law. No other point was argued by Shri Kishore Bhaduri, learned counsel for the appellant. On the other hand, Shri Ashish Shukla, learned Govt. Advocate for the State has argued that Section-50 of the Act would have been attracted only when the person of the accused was searched and not when the contents of the bag being carried on the cycle were searched. Therefore, even if the notice Ex.P-4 had the lacuna as aforesaid, it would not be fatal to the prosecution since Section-50 of the Act has no application to the facts of the case.
6. Having considered the rival submissions, I have gone through the record. The testimony of Assistant Sub-Inspector Shri S.K.Singh PW-4 is wholly un rebutted in cross-examination. It is also fully corroborated by Samaru PW-2. It shows that on receiving secret information Shri S.K.Singh had proceeded to the Raj Nagar triangle and apprehended the accused-appellant who was coming on a cycle on the carrier of which there was a blue bag. His testimony clearly shows that he had searched the bag carried by the accused appellant on the carrier of the cycle.

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7. Section-50 of the Act. is as under :-

"Conditions under which search of persons shall be conducted-

- (1) When any officer duly authorized under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.
- (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).
- (3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
- (4) No female shall be searched by anyone excepting a female.
- (5) When an officer duly authorized under Section-42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (6) After a search is conducted under sub-section(5), the officer shall record the reasons for such belief which necessitated such search

and within seventy-two hours send a copy thereof to his immediate official superior.]”

8. In State of Punjab Vs. Balbir Singh and others reported in 2004-Volume-8, S.C.C.-702, it was held that the provision of Section-50 of the Act applies only in case of personal search of a person and does not extend to search of a vehicle or container or bag. The language of Section-50 is clearly unambiguous and the law so well settled that it is not possible to take a different view. In my considered opinion, therefore, Section-50 of the Act does not apply to the facts of this case wherein on search of the bag carried by the accused appellant on the carrier of the cycle, ganja was recovered. Not being a case of personal search, Section-50 of the Act had no application. The above principle was reiterated in State of Harayana Vs. Jarnail Singh & others reported in 2004-Volume-5-S.C.C.-188 also. It is thus clear in this case that the provisions of Section-50 of the Act 1985 are not attracted.

9. The evidence led by the prosecution clinchingly shows that the bag carried by the appellant on his cycle contained ganja like substance and weighed 8 K.g. It also shows that two samples of 30 grams each were taken from the contents of the bag and were sealed separately. The specimen of the seal used by the Assistant Sub Inspector Shri S.K.Singh to seal the sample was also affixed on the seizure memo Ex.P-10. Not only this the testimony of Head Constable Maheshwar PW-3 also shows that the sealed sample packets promptly deposited in the Malkhana were sent for chemical analysis to the Forensic Science

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Laboratory, Raipur on 12-09-2004. The report of the Forensic Science Laboratory Ex.P-1 shows that the sample received for chemical analysis had contained the impression of seal as "S.K.Singh" corresponding to the impression of the seal used to seal the sample which had been affixed on the seizure memo Ex.P-10. The report of Forensic Science Laboratory proves that on chemical examination, the sample was found to contain ganja. Thus, in this case, the prosecution has led legal, reliable and unimpeachable evidence to prove that the accused-appellant was found in possession of 8 K.G. of ganja on 10-09-2004. The conviction of the appellant under Section-20(b)(ii)(B) of the Act and the sentences imposed thereunder by the trial Court, thus do not call for any interference.

10. In the result, the appeal is without substance and is accordingly dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge